Supreme Court, U.S.
FILED
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MICHAEL RODAK, JR., CLERK

80-1202

No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1980

PETER BAXTER, an employee,

Petitioner,

vs.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD, an administrative agency of the State of California, and A-1 EXPRESS DELIVERY SERVICE, a trucking company, an employer,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

Peter Baxter
1019 Florida Street
Los Angeles Ca 90017

Petitioner in his own behalf

QUESTION PRESENTED

Whether the California Supreme Court erred in denying unemployment benefits to the petitioner who quit his employment which, after two years, had suddenly become conditioned upon petitioner becoming a party to the hazarding of the life and limb of a co-worker.

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Petitioner, Peter Baxter, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the California Supreme Court entered in this proceedings on August 6, 1980.

OPINION BELOW

The opinion of the California Supreme Court is an unpublished opinion filed on June 11, 1980 by the Court of Appeal of the State of California, Second Appellate District, Division Five and adopted by the California Supreme Court by the filing of an order denying a petition for hearing on this matter on August 6, 1980. A copy of the opinion is included in the Appendix as Exhibit A.

JURISDICTION

Jurisdiction in this cause is premised upon 28 U.S.C. Section 2106 for review of the judgment and opinion of the California Supreme Court. A written opinion was issued by the California Court of Appeal for the Second District in Division Five on June 11, 1980 and adopted by the California Supreme Court on August 6,

1980, by filing an order denying a petition for hearing on the matter. A copy of that opinion is included in the Appendix as Exhibit A.

CONSTITUTIONAL PROVISION

Constitution of the United States, Fourteenth Amendment, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The petitioner worked for the respondent employer for two years. The employer testified at the hearing before the administrative law judge thus: Page 30 at line 7: "He (Peter Baxter) typed bills. He typed delivery receipts, and he typed statements, and that's what his job was. His accuracy, as he said, was good. No complaints about his work, no complaints about his attendance. There's no dispute whatsoever on that point."

At page 33 and line 17 of the same transcript Peter Baxter testifies thus:

"Well, I would like to testify that basic to my objection to working there was the fact that they had a young boy out on the dock, and I was there alone with these two dock hands from 5.00 p.m. til 11.00 p.m. at night. And as far as I was concerned, I considered this young

boy a danger to themselves, (sic) and I brought this to the attention of the company, and I got the answer that the young boy who was attending school wanted to attend----wanted to buy an automobile. And I felt he was a hazard. Everytime he walked on that dock I didn't know that he would break his foot or something."

———————0———————

REASONS FOR GRANTING THE WRIT

The employer relied on the petitioner to act in the interests of the employer while the petitioner was alone at the warehouse with the dockhands. The work of the dockhands was heavy labor. It was manhandling general freight. It was not carefully limited in size and weight as in the Post Office or the United Parcel Service. It included heavy drums of oil weighing as much as 500 pounds and more. Safety demands alert, agile, well rested

dockhands. The employer was owed an obligation by the petitioner to be kept fully aware of any and all hazards to the enterprise. Only the petitioner was able to observe the physical condition of the schoolboy during the shift and make a judgment as to the hazard presented.

The employer chose to disregard the warning of the petitioner.

The only complaint the employer had to make about the petitioner was in the fact of the quit.

The petitioner contends that had an accident occurred he would have been exposed to the probability of both criminal as well as civil liability for being a party to the hazard of employing a school boy in work that was beyond his strength.

The petitioner contends that denying unemployment benefits is similar to the state demanding probable criminal conduct.

The state is stating thereby that the appropriate conduct would have been to accept the hazard to the youth. At an inquest the hearing officer would have established that the petitioner was the individual solely competent to make the judgment of the hazard and report such a hazard.

Anything short of a positive action as in a voluntary quit would have been represented as an inadequate means of communicating the gravity of the hazard. This is evident by the insistence of the employer that the petitioner quit purely for his own personal goals and that the incident of the initial letter of the petitioner warning of the hazard was immaterial to the quit.

This is the tenor of the rulings made throughout the various levels of this case. At best the petitioner is re-

garded as being unable to appreciate that a personal concern for the wellbeing of a co-worker is no basis for the cool and correct application of law in this case.

The petitioner contends he was under a clear and positive duty to act in whatever manner was required to call attention to the existing hazard to the schoolboy and in fulfilling such an obligation he may not be denied unemployment benefits as being some how derelict in his obligations to his employer.

This is essentially a case involving the perception of reality. One of the judges signing the appellate opinion purchased at least two automobiles from a former public administrator of the County of Los Angeles. That administrator was subsequently convicted for selling property in his care to people, like this appellate justice, for his own advantage rather than for the estates in his

charge. Such advantage being of an emotional nature as in feeling the warmth of those accommodated.

This justice was not charged for leading the county employee into violating his trust. He has brazenly refused to resign from the bench.

This makes him a disgrace to the office twice. Once in participating in a deal to his personal advantage at the expense of the estates held in trust and twice in asserting his right to dispense justice just so long as he is not convicted in a court of law for felonious conduct.

CONCLUSION

For the above reasons, a Writ of Certiorari should issue to review the opinion of the Supreme Court of California.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

October Term,
1980

Peter Baxter

App. 1

APPENDIX

EXHIBIT A

In The

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

2ND CIVIL
NO. 57852

FILED
JUNE 11, 1980

PETER BAXTER,

Petitioner and
Appellant,

v.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,

Respondent.

A-1 EXPRESS DELIVERY SERVICE,

Real Party in Interest.

Appeal from the Superior Court
Los Angeles County
HONORABLE GEORGE M. DELL, JUDGE

App. 2

OPINION

Petitioner and Appellant Peter Baxter voluntarily quit his job with the Employment Development Department (EDD) where he was a billing clerk. (sic) After a hearing by an administrative law judge of the California Unemployment Insurance Appeals Board, respondent, the judge denied petitioner's claim for unemployment insurance benefits. This decision was affirmed by respondent on appeal. Petitioner then filed a petition for writ of mandate under section 1094.5 of the Code of Civil Procedure and after a hearing the petition was denied on the merits. This appeal followed.

Petitioner acting in propria persona on this appeal states his reasons for quitting his employment. They are similar to the reasons given to the administrative law judge and are as follows:

"YOUR APPELLANT quit his employment after giving notice that he objected strenuously to the continued employment of a high school youth who was engaged in heavy labor for approximately five hours Monday through Friday, inclusively, following his regular and full school day. This heavy labor was a hazard to the health of this schoolboy both in terms of the exhaustion that it entailed as well as the immediate danger of physical injury arising from his inexperience, his light weight, and his lack of energy when handling heavy freight with the constant risk of a heavy object overbalancing him and crushing him."

The California Unemployment Insurance Code section 1256 provides in relevant part: "An individual is disqualified for unemployment compensation benefits if the

director finds that he left his most recent work voluntarily without good cause . . . . ." "Good cause" is not defined in the Unemployment Insurance Code but California decisional law has partially filled the void. In Syrek v. California Unemployment Insurance Appeals Board, 54 Cal. 2d 519, the court defined good cause as (p. 529): ". . . an adequate cause, a cause that comports with the purposes of Unemployment Insurance Code and with other laws." And in Zorrero v. California Unemployment Insurance Appeals Board, 47 Cal.App.3d 434, the court concluded that (p. 439): "[T]he determination of what constitutes 'good cause' for voluntarily quitting one's job must be undertaken with the public policy in mind." The court then went on to state (p. 439): "That policy, as we see it, requires that voluntary termination of employment be

based on serious exigent circumstances."

No California cases have been found involving a situation where an employee voluntarily terminates his employment by asserting a concern over the rights of another employee. While concern about the rights of a fellow employee might be commendable it certainly cannot in the context of this case be considered as "based on serious and exigent circumstances."

Respondent has referred us to decisional law where good cause has been found not to exist. In Zorrero, supra, the claimant quit his job because of the burden of a two-hour ride to work. In Perales v. Department of Human Resources Dev., 32 Cal.App.3d 332, the employee quit work to attend school. And in Evenson v. Unemployment Insurance Appeals Board, 62 Cal.App.3d 1005, the employee quit because

of dissatisfaction with the union. As stated above, none of these reasons constituted good cause.

There is nothing in the record to disclose that petitioner's own work-related responsibilities were impaired over his concern for his fellow worker. He does argue that his fellow employee, a Mexican boy, was forced to go to school and work five hours a day thereafter because of "Gringo law" that is designed to harass and exploit him and to drive him into an early grave. But even if his concern affected his work it would not justify his quitting work under these facts.

We see no reason to disagree with the Administrative Law Judge and respondent Board.

The denial of the petition for writ of mandate is affirmed.

NOT FOR PUBLICATION.

HASTINGS, J.

we concur:

KAUS, P.J.

STEPHENS, J.

NOTE BY PETITIONER:

The Opinion asserts the petitioner was employed by the Employment Development Department. (App. 2 at line 3) The petitioner was employed by A-1 Express Delivery Service. The Opinion omits the determination of the Employment Development Department awarding benefits. This was then reversed on appeal by the Administrative Law Judge. (App. 2 at line 6) The ruling of the Administrative Law Judge fails to mention the schoolboy dockhand. It is not, therefore, reproduced here.

Peter Baxter, Petitioner

ACKNOWLEDGMENT OF THE RECEIPT OF THREE COPIES EACH OF THE WITHIN PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT.

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1. CALIFORNIA SUPREME COURT (3 copies)

by.....

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date.....

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3. CALIFORNIA SUPERIOR COURT
COUNTY OF LOS ANGELES (3 copies)

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date.....

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4. CALIFORNIA UNEMPLOYMENT INSURANCE
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